The City of New York

POLICE DEPARTMENT

In the Matter of the Disciplinary Proceedings	:	
- against -	:	FINAL
Police Officer Briant Nixon	:	ORDER
Tax Registry No. 952055	:	OF
Manhattan Court Section	:	DISMISSAL

Police Officer Briant Nixon, Tax Registry No. 952055, Shield No. 00597, Social Security No. ending in [redacted], having been served with written notice, has been tried on written Charges and Specifications numbered 2015-13328 & 2015-13388, as set forth on forms P.D. 468-121, dated March 19, 2015 and April 6, 2015, and after a review of the entire record, has been found Guilty.

Now therefore, pursuant to the powers vested in me by Section 14-115 of the Administrative Code of the City of New York, I hereby DISMISS Police Officer Briant Nixon from the Police Service of the City of New York.

JAMES P O'NEILL
POLICE COMMISSIONER

EFFECTIVE: June 8, 2017

The City of New York

POLICE DEPARTMENT

February 10, 2017

In the Matter of the Charges and Specifications	:	Case No.
- against -	:	2015-13328 & 2015-13388
Police Officer Briant Nixon	:	
Tax Registry No. 952055	:	
Manhattan Court Section	:	

At: Police Headquarters
One Police Plaza
New York, New York 10038

Before: Honorable David S. Weisel
Assistant Deputy Commissioner Trials

APPEARANCE:

For the Department: Jessica Brenes, Esq.
Department Advocate's Office
One Police Plaza
New York, NY 10038

For the Respondent: John P. Tynan, Esq.
Worth, Longworth & London, LLP
111 John Street - Suite 640
New York, NY 10038

To:

HONORABLE JAMES P. O'NEILL
POLICE COMMISSIONER
ONE POLICE PLAZA
NEW YORK, NEW YORK 10038

Charges and Specifications:

Disciplinary Case No. 2015-13328

1. Said Police Officer Briant Nixon, on March 17, 2015, while off-duty, did wrongfully engage in conduct prejudicial to the good order, efficiency or discipline of the Department to wit: Police Officer Nixon did state to Person A in sum and substance, "Shut up Hoe. I'm going to kill you, and I'm going to kill your daughter, I can't wait to kill you both."
   P.G. 203-10, Page 1, Paragraph 5 – GENERAL REGULATIONS

2. Said Police Officer Briant Nixon, on or about and between March 12, 2015 and March 16, 2015, while off-duty, did wrongfully engage in conduct prejudicial to the good order, efficiency or discipline of the Department to wit: Police Officer Nixon videotaped Person A while engaging in a sex act with her and without her knowledge or consent.
   P.G. 203-10, Page 1, Paragraph 5 – GENERAL REGULATIONS

3. Said Police Officer Briant Nixon, on or about March 17, 2015, while off-duty, did wrongfully engage in conduct prejudicial to the good order, efficiency or discipline of the Department to wit: Police Officer Nixon posted naked pictures of Person A on a web site known as "Vine" without her knowledge or consent.
   P.G. 203-10, Page 1, Paragraph 5 – GENERAL REGULATIONS

Disciplinary Case No. 2015-13388

1. Said Police Officer Briant Nixon, while off-duty on April 1, 2015, within the confines of the 44th Precinct, in Bronx County, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department in that said Officer violated a [redacted] County Criminal Court Temporary Order of Protection, Docket # [redacted] to wit: said Police Officer attempted to push his way into the home of Ms. Person A in violation of said Order.
   P.G. 203-10, Page 1, Paragraph 5 – PUBLIC CONTACT – PROHIBITED CONDUCT GENERAL REGULATIONS

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before the Court on September 8 and November 1, 2016. Respondent, through his counsel, entered a plea of Not Guilty to the subject charges. The Department called Sergeants Roslyn Greaux and Maria Veliz as witnesses. Respondent testified on his own behalf. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

After reviewing the evidence presented at the hearing, and assessing the credibility of the witnesses, the Court finds Respondent Guilty.

FINDINGS AND ANALYSIS

The following facts are undisputed. In January 2015, Respondent met Person A at the 44 Precinct stationhouse, where she was filing a police report. Sometime thereafter, they began dating. On or about March 12 to March 17, 2015, Respondent and Person A traveled to Las Vegas together. While they were in Las Vegas, a video recording was created depicting Respondent and Person A engaging in sexual intercourse (Tr. 98-100, 104-05; Dept. Ex. 3 [Patrol Borough Bronx Investigations Unit interview of Person A], pp. 2, 5-7).

During their return trip, a disagreement between Respondent and Person A arose surrounding issues of fidelity and trust when she found out that he had been communicating with other women. The disagreement continued via text message and telephone once they had arrived back in New York on March 17, 2015. During the course of one of the telephone conversations, Respondent told Person A, "Shut up, hoe. I'm going to kill you, and I'm going to kill your daughter, I can't wait to kill you both." This conversation was recorded and entered into evidence (Tr. 101; Dept. Ex. 3, p. 4; Dept. Ex. 6, recording of phone conversation).

That evening Person A went to the 44 Precinct stationhouse. She eventually spoke with Sergeant Roslyn Greaux of the Patrol Borough Bronx Investigations Unit. At some point, Respondent came to the stationhouse, where he remained until the following day, March 18, 2015, and was placed on modified duty. Later that same day, Respondent was [redacted] suspended from duty (Tr. 26, 109-10; Dept. Ex. 3, p. 8).

On March 19, 2015, a temporary order of protection was issued against Respondent, ordering that he stay completely away from Person A. The order of protection was to remain in effect until May 6, 2015 (Dept. Ex. 4, order of protection).

On the evening of April 1, 2015, while off duty, Respondent went to Person A's apartment building on [redacted] within the confines of the 44 Precinct. He was captured on surveillance footage running up to the threshold of Person A's apartment when she opened the door for another individual (Dept. Ex. 7, surveillance footage). Person A was able to close the door without Respondent entering the apartment and then called 911.

Sergeant Maria Veliz, the 44 Precinct's patrol supervisor that night, responded to Person A's apartment at approximately 0024 hours on April 2, 2015. Veliz spoke to Person A at the scene and was shown the order of protection against Respondent. Suspecting that Respondent might be a member of the service, Veliz notified the duty captain, who later responded to the scene. [redacted] Here in the Department case against Respondent, there are four specifications in two disciplinary cases.

Case No. 2015-13328
Specification No. 1

As noted above, it is undisputed that Respondent threatened to kill Person A and her daughter during a phone conversation on March 17, 2015. Person A recorded the conversation and this recording was introduced as evidence at trial.

Person A did not appear at trial to testify against Respondent and her interview with Bronx Investigations was entered into evidence. During her March 18, 2015, interview, Person A told Department investigators that when she and Respondent returned from Las Vegas, she already had told Respondent she wanted to end their relationship. She attempted to block Respondent's phone number on her cell phone, but he continued to call her using different phone

numbers. On March 17, 2015, at approximately 2030 hours, Respondent called Person A stated that she believed Respondent would keep calling her so she decided to speak to him in an effort to explain why she no longer wanted to be with him. When, at the end of the conversation, Respondent told her that he would kill both her and her daughter, Person A left her house and went immediately to the precinct (Tr. 93-94; Dept. Ex. 3, pp. 4, 7-8).

Person A stated that in the past Respondent had told her "he knows how to get away with murder" and he was not scared to hurt her. When asked whether she wanted to press criminal charges against Respondent, Person A told Department investigators, "I just want to feel protected from him. . . . I don't wish him harm, I just don't want him to be able to harm me or my daughters. And I don't want any contact with him." Person A stated that she was in fear for her safety and claimed that Respondent "doesn't seem stable" based on the way he speaks (Dept. Ex. 3, pp. 8-9, 11-12).

Respondent testified that he made the threats toward Person A and her daughter out of anger because she had threatened to call the police on him during a previous conversation. Respondent testified, "It was just something we said. It wasn't real. Just heated arguments you say things. She threatened me. When she called back, we went again, I threatened her" (Tr. 132-33).

This Court rejects Respondent's claim that there was no real meaning attached to his threats. Regardless of whether Respondent intended to follow through on the threats he made against Person A, the fact remains that he not only threatened to kill Person A, he threatened to kill her daughter. This was intimidating conduct that had the effect of making Person A and her daughter feel unsafe. Accordingly, he is found Guilty of Specification No. 1.

Specification Nos. 2 & 3

In the second specification, Respondent is charged with videotaping Person A while they were having sex without her knowledge or consent. In the third specification, Respondent is charged with posting naked photos of Person A on Vine, a social media application used to share very short video clips, without her knowledge or consent.

On March 17, 2015, at 1546 hours, Respondent sent Person A a screenshot of what appears to be a posting on Vine under the name "Bronx Whores" containing nude images of a woman as viewed on an iPad. The screenshot was taken at 1541 hours but the date is not listed. It indicates that the Vine page has 10 posts that have been viewed 4,766,211 times. The most recent post on the page, which can only be partially seen, had been posted less than one minute prior to the screenshot being taken and had been viewed six times. The following is the subsequent text message exchange between Respondent and Person A:[1]

Respondent: Oh wow let me show you This , this super triple Cray
Person A: Ur officially dead in my life.
Respondent: Yea yea bend over
Respondent: Hush n Take ur slut ass down [redacted]
Person A: Aww ur so hurt
Respondent: Loll
Person A: Such a sensitive prick
Person A: Bye whore :)
Respondent: Check the site. Homegrownfreaks.net
Respondent: Bow to me after
Respondent: And see if i own **u** or not.
Respondent: I'm pretty sure i'm #winning. Hoe (Dept. Ex. 2).

A second set of text messages, beginning at 1600 hours on what appears to be the same day, state the following (Dept. Ex. 1):

Respondent: U viral hoe
Respondent: Worldstarrrrrrrrrrrrrrrrrrrrrrrrr
Person A: Lol
Person A: Cool

[1] The text messages are transcribed from the evidence as is.

Respondent: [tongue-sticking-out emoji] hoe
Person A: Yup
Respondent: [tongue-sticking-out emoji] hoe . . .
Person A: Ok
Respondent: U will always be a hoe
Person A: Wte helps u feel better
Respondent: Stupid ass bitch
Person A: Yup
Respondent: Overdose already
Respondent: Worthless bitch
Person A: Ur point is?
Respondent: You're a easy hoe
Respondent: Who shouldn't be here
Person A: So ur gonna harm me again?
Person A: U hit me n bruised me up in Vegas, now ur harrassing me n threatening me
Respondent: Your not a real mother
Person A: If u say so
Respondent: You are now blocked from texting me how
Person A: Finally!
Respondent: Check worldstar for our footage
Respondent: U skinny bitch
Respondent: Bye dumb hoe
Person A: Sexy skinny bitch
Respondent: Whore skinny bitch

During her interview, Person A told Department investigators that Respondent had sent her screenshots of nude photos he had posted of her on Vine. According to Person A, Respondent created a photo montage of her nude photos and posted it to Vine. He also threatened to send the nude photos to everyone Person A knew as well as to her place of employment (Dept. Ex. 3, p. 5).

Respondent claimed that he was angry and upset during the text message exchanges with Person A. He described Person A's tone as sarcastic and passive-aggressive. When they spoke on the phone later that day, she became "really aggressive and mean" and began "saying anything she could say to me that could hurt me." According to Respondent, Person A began to threaten him by demanding he send her screenshots from his phone of conversations he had with

another woman. She threatened to go to the precinct to report him if he did not send the screenshots (Tr. 103-04).

Respondent denied posting any photos or videos of Person A to Vine or any website. He explained that he first met Person A at the end of January 2015 when she had come to the 44 Precinct to file a complaint against her ex-boyfriend. When Respondent asked Person A why she and her ex-boyfriend had broken up, she said it was because of the screenshot from Vine and sent him that screenshot. Weeks later, during their March 17, 2015, argument, Respondent sent the screenshot back to Person A "to get back at her and make her angry during the argument" (Tr. 97, 99, 125).

The Department proved by a preponderance of the evidence that Respondent released nude photos of Person A on Vine. In making this determination, the Court notes that the evidence in this case is circumstantial. Circumstantial evidence is defined as evidence of a collateral fact. It is evidence of a fact, other than the fact in issue, from which either alone, or with other collateral facts, the fact in issue may be inferred. Richardson on Evidence, § 4-301 (R. Farrell, 11th ed. 1995). While guilt may be established by circumstantial evidence alone, a charge must be dismissed if guilt is not the most reasonable inference which can be fairly drawn from the proven collateral facts. See Matter of Ridings v. Vaccarello, 55 A.D.2d 650, 651 (2d Dept. 1976). Although a finding based entirely on circumstantial evidence may be established in a civil service disciplinary proceeding, the circumstantial evidence must be such as to support the conclusion that the inference drawn "is the only one that is fair and reasonable." Health & Hosps. Corp. (Woodhull Med. & Mental Health Ctr.) v. Amoros, OATH Index Nos. 469-70/02, p. 23 (Nov. 6, 2002), citing Department of Transp. v. Mascia, OATH Index No. 403/85, p. 12 (May 30, 1986). It is important to note that circumstantial evidence is "intrinsically no different from testimonial evidence." Holland v. United States, 348 U.S. 121, 140 (1954).

This Court credits Person A and her statements to Department investigators that Respondent posted nude photos of her on Vine. Not only does this Court credit Person A's statements, her allegations are corroborated by the circumstantial evidence presented at trial.

The screenshot of the Vine posting is consistent with Person A's statement. Although not dated, the screenshot is time-stamped at 1541 hours. It indicates that the posting of Person A had been uploaded less than a minute before the screenshot was taken. Respondent's text message of the screenshot to Person A occurred at 1546 hours on March 17, 2015. It would be highly coincidental that, under Respondent's version of events, Person A received the original screenshot from her ex-boyfriend several weeks prior at almost the exact time of day. Additionally, Respondent's statement to Person A, "Hush n Take ur slut ass down [redacted]" and the inclusion of "[redacted]" on the Vine account's page circumstantially links Respondent to the Vine account. [redacted] in the Bronx was the location of Person A's residence. Respondent mentioned it in the text messages relative to accusing Person A of promiscuity, and the Vine posting essentially did the same thing. Finally, Respondent acknowledged at trial that at the time of the incident he had the Vine app and used it (Tr. 144).

Respondent claimed at trial that the Vine account's 4.7 million views meant he could not have been responsible for the post because it would not have been possible to accumulate such a large number of views so rapidly. Instead, Respondent argued that the post in question had so many views because it had been posted two months prior by her ex-boyfriend (Tr. 146-47). Contrary to Respondent's claim, however, the screenshot shows a post that had just six total views and had been uploaded less than one minute before the screenshot was taken. Respondent's attempt to capitalize on the high number of total views the Vine account had in an effort to assert his innocence, without acknowledging that the total view count did not apply to the single post in question, damaged his credibility before this Court.

Additionally, this Court does not credit Respondent's assertion that he merely re-sent the screenshot Person A had sent him. If Person A had already sent Respondent the screenshot, it does not seem likely that her receiving it back from Respondent would upset her as Respondent claimed was his goal. Rather, Person A's response to Respondent after receiving the screenshot, "Ur officially dead in my life," is the harshest language she used throughout these text messages. It is consistent with Person A just having received a screenshot of Respondent posting her naked photos on social media.

In sum, Respondent's version of events does not make sense. On the other hand, Person A's claim that Respondent created this Vine posting is consistent with the timestamps on both the screenshot and the text messages, as well as the timestamp located within the Vine post indicating that it had been uploaded mere seconds before the screenshot was taken. The only fair and reasonable inference to be drawn from the evidence presented is that Respondent was responsible for posting the photos on Vine.

It should be noted that there was limited evidence presented at trial about the Vine posting. There was no explanation of how Vine worked, from what computer or device the posting was sent, or the identity of the Vine user "Bronx Whores." The screenshot indicates that the Vine page was being viewed on an iPad when it was captured and there was no evidence Respondent owned or had access to an iPad.

Nevertheless, this Court finds that it is more likely than not that Respondent posted naked pictures of Person A on Vine. Accordingly, Respondent is found Guilty of Specification No. 3.

With respect to Specification No. 2, Person A told investigators that Respondent threatened to release nude photos of her as well as a video of them having sex that he had recorded using his phone during their trip to Las Vegas. Person A stated that she was unaware Respondent had created the recording and she did not give him permission to do so. According

to Respondent, not only did Person A agree to create the recording, her cell phone was used to capture the footage and she actually held the phone at one point. Respondent stated that the footage never was forwarded from Person A's phone to his own phone (Tr. 21, 105, 143; Dept. Ex. 3, pp. 5-6, 10).

The alleged video was not entered into evidence at trial. Respondent's counsel argued that it would have been impossible for Person A not to realize she was being recorded during consensual sexual intercourse. The tribunal disagrees. Greaux, the investigator, indicated that the video showed Person A on her hands and knees and Respondent behind her during the sex act in question (Tr. 37). This also is consistent with Respondent's comment in the text messages of that Person A should "bend over."

Respondent testified that the footage recorded in Las Vegas was recorded using Person A's phone and never was forwarded to Respondent's phone. However, during the text message exchanges, Respondent tells Person A, "Check worldstar for our footage" and to check the website Homegrownfreaks.net. Respondent suggested that Person A should "bow to" him because he "own[ed]" her as a result of the videos. When asked on cross examination what he was referring to when he told Person A to check for the footage, Respondent answered, "Nothing. I was just saying anything." He denied insinuating that he had uploaded video footage of the two engaging in sexual intercourse (Tr. 129).

Based on the text messages sent by Respondent to Person A on March 17, 2015, the Court rejects Respondent's assertion that the recording was created with Person A's knowledge or approval. It makes no sense that Respondent would tell Person A about releasing their "footage" on two websites if he did not have the footage himself. Furthermore, Respondent's suggestions that he "own[s]" Person A, is "winning," and she should "bow to" him indicate he felt he had something to hold over her. The fact that Respondent was untruthful in his testimony concerning

whether the footage was on his phone heavily damages his credibility as to his assertion the video was created with Person A's knowledge and consent.

The Court also finds that it was contrary to the good order, efficiency and discipline of the Department for Respondent to create a recording of a sex act with Person A without Person A knowing about or consenting to the recording. This type of recording was illegal under the laws of both New York (Penal Law § 250.45 [1]) and Nevada (Nevada Revised Statutes § 200.604 [1]). The Department takes a dim eye toward surreptitious recordings generally, especially where they invade a person's zone of privacy. See, e.g., *Case No. 2016-15330* (Oct. 20, 2016) (guilty plea to, inter alia, posting to Snapchat photographs of prisoner in holding cell: female prisoner asked to use officer's cell phone camera to examine her face because her makeup had gotten smeared; officer held camera up to prisoner so she could see herself on screen, but unbeknownst to her, he had turned on video function and filmed her, then posted to Snapchat).

Thus, Respondent is found Guilty of Specification No. 2.

Case No. 2015-13388

Here, Respondent is charged with violating the order of protection against him by attempting to push his way into Person A's home. Veliz, the 44 Precinct patrol supervisor, responded to Person A's apartment at 0024 hours on April 1, 2015, following Person A's 911 call. Veliz testified that when she spoke to Person A in her apartment, Person A was "incoherent, she was pacing in the living room, holding her hair back, hyperventilating, biting her nails, and saying I need to leave. I need to move." At one point, Person A stated that she could not breathe. Initially, Person A stated that she did not trust Veliz and she believed Veliz was there to protect Respondent (Tr. 52, 58).

Person A then explained to Veliz that she had been waiting for a male friend to come to her apartment. Once he arrived, she opened the door to let him inside. After he entered the

apartment, she noticed Respondent coming down the stairs from the floor above, "trying to rush into the apartment." Respondent placed his foot in the door, but Person A was able to push the door closed. Once she closed the door, Person A called 911 and her friend left the apartment. Though not sure at the time, Veliz believed that Respondent might have been a police officer based on some of the statements made to her by Person A (Tr. 59-60, 88).

Veliz testified that Person A was fearful when Respondent tried to push her apartment door open. Veliz acknowledged, however, that the domestic incident report (Dept. Ex. 5) indicated Person A was not fearful. Veliz noted that, as a supervisor with two police officers accompanying her, she did not complete the entire DIR and only filled out a portion of it. Veliz also noted that the mark of not fearful could have indicated a later time, when the DIR was completed (Tr. 66-74, 77-78).

When Veliz told Person A she needed to go to the 44 Precinct, Person A refused, indicating that she did not feel comfortable because Respondent worked there. At that point, Veliz asked that the duty captain respond to the location. Later that same morning, Veliz arrested Respondent, at the precinct, as ordered (Tr. 61, 65, 86-87).

Respondent testified that between March 18 and March 31, 2015, Person A attempted to contact him every day, but he did not have any contact with her. On April 1st, Respondent received a phone call from an unknown number. Not recognizing the number, he answered it to hear Person A's voice. Person A told him that she was at court [redacted] She then asked Respondent to pick her up at the courthouse. According to Respondent, he was excited that "it was all over" and went to pick Person A up. He conceded that he did not make any phone calls to verify what Person A had told him (Tr. 111-14, 137).

When Person A entered Respondent's car, she told him that everything was over, she had not meant to do what she had done to him, and had not wanted the order of protection anyway – it was done by the court. They went back to Person A's apartment, where they spent several hours and agreed to get back together (Tr. 114-16).

Around 2330 hours, Person A received a phone call that she took in another room. When she returned from the call, she told Respondent that he should leave because she was getting tired. Respondent left Person A's apartment, suspicious of the suddenness of her request. As he left the building, Respondent noticed a car that he recognized as belonging to Person A's ex-boyfriend, with several men inside, as well as several men standing on the corner. Respondent implied at trial that they were part of a gang or crew or were selling drugs. According to Respondent, he would have had to walk past the men in order to get to his own vehicle and thought that it could be a set-up (Tr. 116-17, 151-53).

Rather than confront the men, Respondent decided to go back into Person A's building and wait in the stairwell on the floor above Person A's apartment until the ex-boyfriend passed and he could leave. After about 15 minutes waiting in the stairwell, Respondent decided that he wanted both Person A and the man, whom Respondent soon suspected was not her ex-boyfriend, but current boyfriend, to see Respondent there so he could confront them. Respondent explained that he wanted to be seen so that "whatever game she is playing would be over" (Tr. 117-18).

Respondent testified that he tried to come down the stairs at the exact time the male individual came up the stairs and entered her apartment, but the male entered the apartment and slammed the door on him. Respondent admitted pushing against Person A's apartment door with his shoulder, to keep the door from closing on him. After the door closed, Respondent "kind of grunted" and then left (Tr. 118, 141).

The surveillance footage from Person A's apartment building (Dept. Ex. 7) depicts the following:

> **11:25:24** – Respondent walks up the stairs, past Person A's apartment door and up another flight of stairs. He then stands on the stairs between Person A's floor and the floor above.
> **11:47:59** – Respondent stands over the railing looking down on the floor below.
> **11:48:25** – An unidentified individual walks up the stairs, approaches Person A's apartment door and enters.
> **11:48:30** – Respondent rushes down the stairs and kicks and leans into Person A's apartment door as it closes on him. He sticks his foot out to wedge it under the door, and pushes the door with his shoulder. The door opens slightly and then shuts.
> **11:48:50** – Respondent walks away from Person A's door and down the stairs.

Respondent acknowledged receiving a copy of the order of protection that was issued against him as of March 19, 2015, but denied knowing when it expired. He stated that he believed it to be in effect until his next court appearance but did not know when this was (Tr. 135).

As a uniformed member of the service, Respondent is expected to have a basic familiarity with legal documents. The uncontested fact is that the order of protection was in effect until May 6, 2015. Even if this Court credits Respondent's claim that Person A indicated the order was withdrawn, it does not excuse the fact that he violated a valid court order. It was a standard two-page order of protection and legibly indicated the expiration date on the first page. With a criminal case pending at the time, Respondent all the more so should have verified what Person A purportedly told him.

Respondent's assertion that he wanted to confront the male individual is inconsistent with his claim that he could not leave Person A's building because he saw that individual's vehicle and believed him and his associates to be dangerous. Finally, the video demonstrates that Respondent did not try merely to prevent a door from closing on him in the course of "confronting" the couple. The front door of Person A's apartment was just about completely

closed before Respondent arrived at the threshold and stuck out his foot in an attempt to wedge it under the door. He also leaned into the door with his shoulder, to open it, not to stop it from closing on him because it was not in the process of closing on him. Accordingly, Respondent is found Guilty.

PENAL TY RECOMMENDATION

In order to determine an appropriate penalty, Respondent's service record was examined. See Matter of Pell v. Board of Educ., 34 N.Y.2d 222, 240 (1974). Respondent was appointed to the Department on January 9, 2012. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

The Advocate recommended Respondent be terminated due to the gravity of the offenses and the damage that Respondent's actions caused to the integrity of the Department. Counsel for Respondent argued that any misconduct does not warrant separation. Counsel stated that the verbal threats Respondent made to Person A were merely "intemperate" and "may be problematic." Additionally, counsel argued that Respondent did not barge into Person A's apartment and assault anyone. Rather, he waited outside her apartment so that he could know for sure who Person A was choosing (Tr. 155-56, 160, 168-69).

This tribunal rejects counsel's characterization of Respondent as merely a scorned lover who had fallen victim of betrayal at the hands of Person A. The truth is that, as a police officer of only three years at the time, Respondent threatened to kill both Person A and her daughter, and put nude pictures of Person A online. Approximately two weeks later, Respondent attempted to push his way into her apartment while a valid order of protection against him still was in effect. Even if, as asserted, Respondent had been at the apartment earlier at Person A's invitation, he certainly was no longer welcome when he tried to push his way in. Additionally, Respondent has been found guilty of videotaping Person A while they engaged in consensual sex without her

knowledge or consent. Though not charged misconduct, Respondent then threatened the online release of this footage, including to one site set up specifically to upload users' own pornography.

In sum, Respondent's conduct was vile and intimidating and he remains unrepentant. Under the circumstances, separation from the Department is appropriate. See *Case Nos. 2008-0876, -0878, -0879 & 2011-4738* (June 13, 2012) (vested-interest retirement offered for officer who wrote to [redacted], "I would have done ANYTHING just for you to speak to me. . . . But nooooooo you had to be a stupid fucking bitch. . . . I am not like . . . those other niggas you fucked and threw away like a used condom. You wanna know why I don't want you? Your pussy is whack, your shit is as wide as the ocean, you been fucking too much. . . . [F]or real if you see me in the streets you better run"; violated consecutive orders of protection by friending her on social media and driving by her house; then, after being modified and assigned to an arraignment part, mused aloud about an attractive female arrestee that he would "break her" during sex).

Accordingly, the Court recommends that Respondent be ***DISMISSED*** from the New York City Police Department.

APPROVED

JUN 08 2017

JAMES P. O'NEILL
POLICE COMMISSIONER

Respectfully submitted,

David S. Weisel
Assistant Deputy Commissioner Trials

POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner Trials

To: Police Commissioner

Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER BRIANT NIXON
TAX REGISTRY NO. 952055
DISCIPLINARY CASE NOS. 2015-13328 & 2015-13388

Respondent's last three performance evaluations were as follows: in 2015 he received an overall rating of 3.5 "Highly Competent/Competent," and in 2014 and 2013 it was 3.0 "Competent." [redacted]

Respondent has no prior disciplinary history.

David S. Weisel
Assistant Deputy Commissioner Trials